



U.S. Department of Justice

*United States Attorney
Southern District of New York*

*86 Chambers Street, 3rd floor
New York, New York 10007*

May 25, 2017

BY ECF

The Honorable John G. Koeltl
United States District Judge
United States Courthouse
500 Pearl Street
New York, New York 10007

Re: *Flores v. United States Dep't of Justice*,
No. 17 Civ. 0036 (JGK)

Dear Judge Koeltl:

This Office represents the United States Department of Justice ("the Government"), the defendant in the above-referenced case, which arises under the Freedom of Information Act ("FOIA"). I write respectfully, pursuant to the Court's orders issued on April 17 and May 18, 2017 (Dkt. Nos. 16, 19), to provide a brief status report, and also to respond to the letter filed by Plaintiff on May 16, 2017 (Dkt. No. 18).

Since the last conference before the Court on April 13, 2017, and pursuant to the Court's order issued on April 17, 2017 (Dkt. No. 16), the Government made a first release of documents responsive to the Plaintiff's FOIA requests on April 27, 2017. This first release consisted of approximately 179 transcripts and other documents relating to public speeches and press conferences given by former U.S. Attorney Preet Bharara from 2009 to 2016, and approximately 91 photographs of physical demonstratives used as visual aids during Mr. Bharara's public speeches and press conferences. Since that release, the Government has continued to work to identify and gather additional documents responsive to Plaintiff's FOIA requests. The Government is presently hopeful that it will complete its release of all remaining responsive, non-privileged documents on June 2, 2017, per the Court's order (Dkt. No. 16); if the Government requires more time to complete its release, the Government will make an application to the Court next week.

The Government strongly disagrees with the contentions set forth in Plaintiff's May 16, 2017 letter that the Government has committed any misconduct, intentional or otherwise, in this matter. To the contrary, the Government has made numerous attempts, starting on April 27, 2017, and continuing thereafter, to provide the documents contained in its first release to the Plaintiff. Indeed, Plaintiff acknowledges that he has received at

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least part of the first release. The Government's efforts to provide the first release of documents to the Plaintiff include the following:

- On April 27, 2017, in order to provide the first release of documents to Plaintiff by the fastest means possible, the Government emailed the release to Plaintiff in nine separate emails, using the email address that the Plaintiff had provided to the Court. The Government's email system showed that all nine emails had been successfully delivered.
- Later on April 27, 2017, the Plaintiff acknowledged that he had received some of the emails, but indicated that he might have problems receiving the complete first release due to space constraints in his email inbox. Plaintiff requested that the Government provide the release to him via a Google drive, but as the Government explained to Plaintiff, agency rules prohibit transmitting FOIA releases in that manner.
- On April 28, 2017, in response to Plaintiff's concerns, the Government sent Plaintiff the first release on a DVD, by Federal Express. According to the Federal Express tracking information, delivery was attempted three times over the next several days, but was never accepted. The DVD was then kept for pick-up for approximately one week at a local Fed Ex facility, but was never picked up.
- Also on April 28, 2017, and multiple times over the next several days in response to Plaintiff's requests, the Government re-sent the first document release, in whole or in part, to Plaintiff at a second email address that Plaintiff requested the Government use. Each time, the Government's email systems showed that all emails had been successfully delivered.
- On May 9, 2017, after Plaintiff stated that he had still not received all of the emails and at Plaintiff's request, the Government sent a second DVD containing the first document release to Plaintiff via regular mail. The Government inadvertently neglected to include the password for the second DVD at the time that it was sent.
- On May 15, 2017, Plaintiff told the Government that he had not been able to use the second DVD on his Apple laptop and requested that the release be provided in another format. Later that day, Plaintiff reported that he had not been able to use the second DVD on a friend's laptop. Because it seemed apparent that Plaintiff did not have the password for the second DVD, the Government provided the password by email, and offered to provide the first document release again on a non-password protected flash drive, or to print out all of the documents in the first release and to provide them to Plaintiff in hard copy.

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- On May 16, 2017, Plaintiff rejected the Government's offers and informed the Government that he intended to file a letter with the Court.

As these steps indicate, the Government has complied with the dates and procedures set forth by the Court, and has made numerous good faith efforts to ensure Plaintiff's receipt of the first document release. The Government intends to include the entire first release of documents with the second release that it will make on June 2, 2017.

Thank you for your attention to this matter.

Respectfully,
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Acting United States Attorney

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